

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
DISTRICT OF NEBRASKA
AT _____ M
SEP 22 1988
11
William L. Olson, Clerk
By _____ Deputy

THE FEDERAL LAND BANK OF OMAHA,)
A Corporation,)
Appellant.)

CV 87-L-511

BK 87-634

vs.

LORANCE HIPPEN and)
CHARLENEE HIPPEN,)
Husband and Wife,)
Appellees.)

ORDER

This matter is before the Court on the appeal of the Federal Land Bank from the order of the Bankruptcy Court entered on August 20, 1987 (Filing No. 1). The parties have submitted briefs on the matter.

The appellees filed a petition for relief under Chapter 12 of the United States Bankruptcy Code. The appellees' Chapter 12 plan was submitted for confirmation, and the appellant's filed objections to the plan. The Bankruptcy Court held a confirmation hearing on June 23, 1987. At the hearing, the Court received evidence on the issues of valuation of appellees' land, and the interest rate to be applied on appellant's allowed secured claim. The Court entered its order on August 20, 1987, finding as follows:

1. Interest rate must be calculated on date of petition, from Wichman case formula unless plan rate is higher.

FILED
DISTRICT OF NEBRASKA
AT _____ M
SEP 30 1988
Judith M. Napier, Clerk
U.S. Bankruptcy Court - Lincoln
By _____ Deputy

COPY

2. Land values: The values proposed in the plans appear to approximate the market values. None of the experts knew the actual historical and present use of all the land; its productivity, or how it actually compared to their so-called comparables. Debtors' "appraiser", though knowing more about the land and improvements, did not explain to the Court how his values came in so low.

Plans [are to] be amended. Debtor to amend in 21 days and a new confirmation hearing will be set.

The appellant appealed from the above-stated order. In its brief, the appellant stated the issues on appeal as follows:

1. Should Joe Kovarik not have been allowed to testify on behalf of the debtors as to values of debtors' real estate for the reason that Kovarik is not a licensed or certified real estate appraiser in the State of Nebraska and there was inadequate foundation for his testimony?
2. Was the Court's finding setting the value of the real estate clearly erroneous?

Upon close reading of the order appealed from and the appellant's brief, this Court finds that appellant has appealed from a decision which the bankruptcy judge has not in fact made. On page 8 of its brief, the appellant states: "Therefore, the Bankruptcy Court's approval of the plan valuation of all land and improvements at \$132,125.00 is clearly erroneous and not supported by any evidence by either party." However, the

bankruptcy court's order entered on August 20, 1987, does not indicate that the bankruptcy judge approved the plan's valuation of the land and improvements. In fact, the last two sentences of the order indicate that the bankruptcy court did not approve the plan. Those sentences state that the plan is to be amended and another confirmation hearing will be set to consider the amended plan. Nor does the order entered on August 20, 1987, indicate that the bankruptcy court approved any other valuation of the land. This Court concludes that the bankruptcy court has not by its order of August 20, 1987, approved the plan's value, nor any other proposed value of the real estate. Thus, that issue may not be considered on appeal.

Additionally, because no final order of the Bankruptcy Court on the issue of the land's value has been entered, the issue of whether or not the "appraiser" should have been allowed to testify is not properly before this Court.

IT THEREFORE IS ORDERED that this appeal is dismissed.

Dated this 27^d day of September, 1988.

BY THE COURT:


WILLIAM G. CAMBRIDGE
United States District Judge